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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DOCUMENT ELECTRONICALLY FILED

MARK and CHRISTINE ESPOSITO, on behalf of themselves and all others similarly situated,	:	Civil Action No.
Plaintiff,	:	**CLASS ACTION COMPLAINT**
vs.	:	**JURY TRIAL DEMANDED**
FIDELITY NATIONAL TITLE INSURANCE COMPANY, CHICAGO TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE COMPANY, TICOR TITLE INSURANCE COMPANY OF FLORIDA, NATIONAL TITLE INSURANCE OF NEW YORK; SECURITY UNION TITLE INSURANCE COMPANY, FIDELITY NATIONAL FINANCIAL, INC., FIRST AMERICAN TITLE INSURANCE COMPANY, UNITED GENERAL TITLE INSURANCE COMPANY, CENSTAR TITLE INSURANCE COMPANY, T.A. TITLE INSURANCE COMPANY, FIRST AMERICAN CORPORATION, COMMONWEALTH LAND TITLE INSURANCE COMPANY, COMMONWEALTH LAND TITLE INSURANCE COMPANY OF NEW JERSEY, LAWYERS TITLE INSURANCE CORPORATION, TRANSNATION TITLE INSURANCE COMPANY, LANDAMERICA FINANCIAL GROUP, INC., STEWART TITLE GUARANTY COMPANY, STEWART INFORMATION SERVICES CORPORATION, OLD REPUBLIC NATIONAL TITLE	:	

INSURANCE COMPANY, AMERICAN :
GUARANTY TITLE INSURANCE COMPANY, :
OLD REPUBLIC INTERNATIONAL :
CORPORATION, and NEW JERSEY LAND :
TITLE INSURANCE RATING BUREAU, :
______________________________________:

Plaintiffs, Mark and Christine Esposito, residing at 543 Sentinel Road, Moorestown, New Jersey, by their attorneys, on behalf of themselves and all others similarly situated, bring this action for treble damages and injunctive relief under the antitrust laws of the United States and the State of New Jersey against the Defendants named herein, and complain and allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs challenge the Defendants' collective price-setting of rates and attendant services in the State of New Jersey for title insurance as *per se* illegal price-fixing under federal and state antitrust laws.

2. Title insurance is a warranty purchased to protect against a loss arising from problems that occurred in the past which affect the title to the real estate that a consumer is buying. Title insurers do not compete on the basis of the policies or coverage that they provide. In fact, almost all title policies are based on a single set of form policies published and maintained by the national trade association, the American Land Title Association. Furthermore, the end goal of an exhaustive title search by a title insurer is not to provide coverage for title defects that the search uncovers, but rather to exclude coverage for any such defects and, therefore, further reduce the real value of the title policy which is written to cover only *unknown* defects in title at the time of issuance. As a result, title insurance is a commodity product.

3. The title insurance market in New Jersey consists of dozens of carriers, ranging in size from regional companies to national affiliates. However, the market is dominated by five groups of affiliated companies which, combined, account for over 95 percent of the title insurance premiums in New Jersey and which own and control the title agents in many New Jersey counties upon which every title insurer must rely on in order to issue title policies.

4. The New Jersey Department of Banking and Insurance ("Department of Insurance") is the agency assigned to supervise, examine, and regulate title insurers and rating bureaus. (*See* N.J.S.A. § 17:46B-41 *et seq*.). The Department of Insurance is charged with ensuring that insurance rates are not "unfairly discriminatory" or "unreasonably high." N.J.S.A. § 17:46B-45. To that end, New Jersey law requires title insurers, or a rating bureau on their behalf, to submit proposed rates to the Department of Insurance for review. Rates must take into account, *inter alia*, the experience of the title company or rating organization making the filing, its interpretation of any statistical data relied upon and the experience of other title companies or rating organizations (*See* N.J.S.A. § 17:46B-43). Filings must be accompanied by a statement setting forth the basis upon which the rate was fixed and the fees are to be computed. (*See* N.J.S.A. § 17:46B-43). New Jersey law specifically states that it does not, "prohibit or discourage reasonable competition, or [ ] require, prohibit or encourage, except to the extent necessary to accomplish the purposes [of the statute], uniformity in title insurance rates, rating systems and rating plans and practices." N.J.S.A. § 17:46B-41.

5. Defendants, which include the largest title insurance companies in the nation, along with other title insurers, collectively formed the New Jersey Land Title Insurance Rating Bureau ("NJLTIRB"). Defendants, through NJLTIRB, submit agreed upon title insurance rates and charges for attendant services to the Department of Insurance.

6. Defendants have made it impossible for the Department of Insurance to review, regulate or supervise the reasonableness of the rates collectively set by Defendants because those rates are based principally on undisclosed costs, which the Department of Insurance has no ability to assess. These "costs" include kickbacks, referral fees and other expenses designed to solicit business referrals from the other major players: real estate agents and agencies, banks, lenders, builders, developers and other middlemen or go-betweens.

7. The ultimate purpose and effect of the Defendants' unlawful conduct has been to increase the prices New Jersey title insurance purchasers have paid compared to what they would have paid absent Defendants' joint illegal conduct. Plaintiffs bring this class action to recover from the Defendants the damages they and others who purchased title insurance in the State of New Jersey sustained as a result of Defendants' anticompetitive and unlawful conduct.

JURISDICTION AND VENUE

8. This Complaint is filed and these proceedings are instituted under Sections 4 and 16 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§ 15, 26) to obtain injunctive relief and to recover treble damages and the costs of suit, including reasonable attorneys' fees, against defendants for the injuries sustained by plaintiffs and the members of the class which they represent by reason of Defendants' and their co-conspirators' violations, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

9. Venue is proper in this district pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b), (c). Defendants transact business, maintain offices or are found within the District of New Jersey. The interstate commerce described hereinafter is carried on, in part, within the District of New Jersey and the conspiratorial acts herein alleged were carried on, in part, in the District of New Jersey.

PLAINTIFFS

10. Plaintiffs, Mark and Christine Esposito, are individuals residing at 543 Sentinel Road, Moorestown, New Jersey, Burlington County. During the Class period, Plaintiffs purchased title insurance from First American Title Insurance Company, one of the Defendants herein, and have been injured by reason of the antitrust violations alleged.

DEFENDANTS

11. The Fidelity family of title insurance companies (collectively, "Fidelity") – which includes Defendant Fidelity National Title Insurance Company ("Fidelity Title"), Defendant Chicago Title Insurance Company ("Chicago Title"), Defendant Ticor Title Insurance Company ("Ticor Title"), Defendant Ticor Title Insurance Company of Florida ("Ticor Title Florida"), Defendant National Title Insurance of New York ("National"), Defendant Security Union Title Insurance Company ("Security"), and their affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including New Jersey. Nationally, Fidelity accounts for approximately 27 percent of title premiums, which in 2006 amounted to roughly $4.6 billion. Fidelity Title, Chicago Title, Ticor Title, Ticor Title Florida, National and Security are members of NJLTIRB and have charged title insurance rates in New Jersey that NJLTIRB collectively sets.

12. Fidelity Title, Chicago Title, Ticor Title, Ticor Title Florida, National and Security and their affiliates are wholly-owned and/or controlled by Defendant Fidelity National Financial, Inc. ("Fidelity National"), a Delaware corporation headquartered in Jacksonville, Florida. Through its subsidiaries, Fidelity National is a provider of title insurance, specialty insurance, and claims management services. Fidelity National had 2006 revenues of roughly

$9.4 billion. Fidelity engaged in the conduct challenged herein with the approval and assent of Fidelity National.

13. The First American family of title insurance companies (collectively, "First American") – which includes Defendant First American Title Insurance Company ("First American Title"), Defendant Censtar Title Insurance Company ("Censtar"), Defendant United General Title Insurance Company ("United General Title"), Defendant T.A. Title Insurance Company ("T.A. Title"), and their affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including New Jersey. Nationally, First American accounts for approximately 29 percent of title premiums, which in 2006 amounted to roughly $4.8 billion. First American Title, Censtar, United General Title and T.A. Title are members of NJLTIRB and have charged title insurance rates in New Jersey that NJLTIRB collectively sets.

14. First American Title, Censtar, United General Title, and T.A. Title and their affiliates are wholly-owned and controlled by Defendant First American Corporation ("FAC"), a California corporation headquartered in Santa Ana, California. Through its subsidiaries, FAC is a provider of title insurance, business information, and related products and services. FAC had 2006 revenues of roughly $8.5 billion. First American engaged in the conduct challenged herein with the approval and assent of FAC.

15. The LandAmerica family of title insurance companies (collectively, "LandAmerica") – which includes Defendant Commonwealth Land Title Insurance Company ("Commonwealth"), Defendant Commonwealth Land Title Insurance Company of New Jersey ("NJ Commonwealth"), Defendant Lawyers Title Insurance Corporation ("Lawyers Title"), and Defendant Transnation Title Insurance Company ("Transnation"), and their affiliates – is

engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including New Jersey. Nationally, LandAmerica accounts for approximately 19 percent of title premiums, which in 2006 amounted to roughly $3.15 billion. Commonwealth, NJ Commonwealth, Lawyers Title and Transnation are members of NJLTIRB and have charged title insurance rates in New Jersey that NJLTIRB collectively sets.

16. Commonwealth, NJ Commonwealth, Lawyers Title, and Transnation are wholly-owed and controlled by Defendant Land America Financial Group, Inc. ("LAFG"), a Virginia corporation headquartered in Glen Allen, Virginia. Through its subsidiaries, LAFG is a provider of title insurance and other products and services that facilitate the purchase, sale, transfer, and financing of residential and commercial real estate. LAFG had 2006 revenues of roughly $4 billion. LandAmerica engaged in the conduct challenged herein with the approval of LAFG.

17. The Stewart family of title insurance companies (collectively, "Stewart") – which includes Defendant Stewart Title Guaranty Corporation ("Stewart Title") and its affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including New Jersey. Nationally, Stewart accounts for approximately 12 percent of title premiums, which in 2006 amounted to roughly $2 billion. Stewart Title is a member of NJLTIRB and has charged title insurance rates in New Jersey that NJLTIRB and the defendant title insurers collectively set.

18. Stewart Title is wholly-owned and controlled by Defendant Stewart Information Services Corporation ("SISC"), a Delaware corporation headquartered in Houston, Texas. Through its subsidiaries, SISC is a provider of title insurance and related information and post-closing lender services. SISC had 2006 revenues of approximately $2.5 billion. Stewart engaged in the conduct challenged herein with the approval and assent of SISC.

19. The Old Republic family of title insurance companies (collectively "Old Republic") – which includes Defendant Old Republic National Title Insurance Company ("Old Republic Title"), and Defendant American Guaranty Title Insurance Company ("American Guaranty") and their affiliates – is engaged in selling title insurance to purchasers of commercial and residential real estate throughout the United States, including New Jersey. Nationally, Old Republic accounts for approximately 6 percent of title premiums, which in 2006 amounted to roughly $1 billion. Old Republic Title and American National are members of NJLTIRB and have charged title insurance rates in New Jersey that NJLTIRB and the defendant title insurers collectively set.

20. Old Republic National and American Guaranty and their affiliates are wholly owned and/or controlled by Defendant Old Republic International Corporation ("Old Republic International"), a Delaware corporation headquartered in Chicago, Illinois. Through its subsidiaries, Old Republic International is a provider of title insurance, general insurance, mortgage guaranty insurance, and life and health insurance. Old Republic International had 2006 revenues of roughly $3.8 billion. Old Republic engaged in the conduct challenged herein with the approval and assent of Old Republic International.

21. Together, Fidelity, First American, LandAmerica, Stewart and Old Republic account for more than 95 percent of the title premiums consumers pay in New Jersey, which in 2007 amounted to roughly $450 million. Throughout the relevant damages period, Defendants charged New Jersey consumers identical title insurance rates that were collectively set through NJLTIRB.

22. Defendant NJLTIRB is a voluntary association of title insurers purportedly operating pursuant to N.J.S.A. § 17:46B-46 as a title insurance rating organization. NJLTIRB maintains its offices in Freehold, New Jersey.

23. NJLTIRB compiles from its members statistical data relating to their title insurance premiums, losses and expenses and submits this information in aggregate form to the Insurance Department. NJLTIRB also prepares and submits a manual which sets forth title rates to be charged and rules to be followed by NJLTIRB's members.

24. NJLTIRB's membership is comprised of defendant insurers and other title insurers that are licensed to issue policies in New Jersey. Currently, Fidelity, First American, Land America, Stewart, and Old Republic collectively represent 17 of NJLTIRB's 24 members.

CO-CONSPIRATORS

25. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the Defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof. These co-conspirators include the various title insurers, not named as defendants herein, who were members of NJLTIRB during all or part of the class period.

DEFINITIONS

26. As used herein, the term "Class Period" shall mean the time period commencing March 19, 2004 to the present.

CLASS ACTION ALLEGATIONS

27. Plaintiffs bring this action under Rule 23, and particularly subsection (b)(3), of the Federal Rules of Civil Procedure, on behalf of themselves and a class (the "Class") consisting of:

> all persons, excluding governmental entities, Defendants, subsidiaries and affiliates of Defendants, who, from the period starting March 19, 2004 to the

present, purchased directly, from one or more of the Defendants and/or their co-conspirators, title insurance for residential and/or commercial property in the State of New Jersey.

28. The number of potential Class members is so numerous that joinder is impracticable.

29. Plaintiffs, as representatives of the Class, will fairly and adequately protect the interest of the Class members. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of the Class members.

30. Except as to the amount of damages each member of the Class has by itself sustained, all other questions of fact and law are common to the Class, including, but not limited to, the contract, combination or conspiracy hereinafter alleged, the violation of Section 1 of the Sherman Act (15 U.S.C. §1) and the New Jersey Antitrust Act, N.J.S.A. 56:9-1 *et seq.*, and the effects of such violations. Plaintiffs and Class members purchased title insurance at artificially maintained, non-competitive prices established by the actions of Defendants in connection with the restraints of trade alleged herein. Plaintiffs and Class members have all sustained damage in that they paid inflated prices for title insurance.

31. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy in that, among other things, there is no interest by members of the Class in individually controlling the prosecution of separate actions, and it is desirable to concentrate the litigation of the claims made herein in a single proceeding in order to provide small claimants with a forum in which to seek redress for this antitrust violation. Whatever difficulties may exist in the management of the class action will be greatly outweighed by the class action procedure, including, but not

limited to, providing claimants with a method for the redress of claims which may not otherwise warrant individual litigation.

TRADE AND COMMERCE

32. During all or part of the Class Period, Defendants and their co-conspirators were involved in the sale of title insurance in the State of New Jersey.

33. During the Class Period, the Defendants and their co-conspirators sold substantial quantities of title insurance in a continuous and uninterrupted flow in interstate commerce.

34. During the Class Period, Class members from locations both within and outside the State of New Jersey purchased commercial or residential property and title insurance within New Jersey.

35. During the Class Period, the Defendants were the major sellers of title insurance in the United States and the State of New Jersey. Defendants controlled in excess of 90 percent of the market for title insurance in the United States and more than 95 percent of the market for title insurance in the State of New Jersey.

36. The activities of the Defendants and their co-conspirators, as described herein, were within the flow of interstate commerce and substantially affected interstate commerce.

FACTUAL ALLEGATIONS

37. Title insurance is one of the most costly items associated with the closing of a real estate transaction. In New Jersey, NJLTIRB's members' collectively fixed rates for title insurance are based on a percentage of the total value of the property being insured. For residential properties, this price ranges from about $157.50 (for a $30,000.00 property) to $2,125 (for a $1 million property). For more expensive homes and commercial properties, these prices are significantly higher and can reach tens of thousands of dollars.

38. Title insurance protects the purchaser of a property and/or a lender from any unidentified defects in the title that would interfere with the full and complete ownership and use of the property with the ultimate right to resell the property. In New Jersey, title insurance is required by lenders in most residential and commercial real estate transactions. Title insurance is almost always required by lenders for a residential or commercial property purchaser to obtain a mortgage. It protects the lender up to the amount of the mortgage ("loan policy"). A purchaser can also buy title insurance to protect the purchaser for the purchaser's interest in the property ("owner's policy"). Title insurance protects a purchaser from loss for hazards and defects in title that already exist at the time of purchase. There is a one-time premium.

39. New Jersey requires title insurers to file their rates and fees with the Department of Insurance. New Jersey is one of only a very small number of states in which an insurer may satisfy that obligation by becoming a member of a licensed rating bureau which makes such filings on the insurer's behalf. This is set forth in N.J.S.A. § 17:46B-42. In addition, as set forth in N.J.S.A. § 17:46B-47, any member of the rating bureau may seek permission to charge a rate different from the rates filed by NJLTIRB. Currently, each Defendant submits its title insurance rates and service fees collectively through NJLTIRB. Thus, each charges an identical rate for title insurance and services in New Jersey. Through NJLTIRB, Defendants have been able to collectively fix title insurance rates and attendant services at supra-competitive levels.

40. There are two principal cost components of NJLTIRB's title insurance rate calculation. One comprises the risk associated with issuing the title policy. The other comprises the "agency commissions" paid to title agents.

41. The risk component covers the risk the title insurer bears for any undiscovered defects in the title. Unlike property insurance, title insurance carries with it a very limited risk of

loss to the insurer. That is because title insurance protects only against *prior* events that cause defects in title. With a proper search and examination of prior ownership records, any such defects can be, and almost always are, readily identified and excluded from the policy's coverage. Consequently, the average payout on a title insurance policy in New Jersey amounted to less than five percent of the total premiums collected. This is very different from property and casualty coverage (such as auto and home insurance) – which protects against *future* occurrences over which the insurer has little to no control – where the average claim payout amounts to more than 80 percent of the total premium.

42. The "agency commissions" component of the title insurance rate covers payments made to title agents. Defendants have an ownership or management stake in many of the title agencies to which these payments are made. The bulk of the agency commissions is composed of costs wholly unrelated to the issuance of title insurance. These costs include kickbacks and other financial inducements title insurers provide to title agents and indirectly (through title agents) to the brokers, lenders and others who, in reality, are the ones deciding which title insurer to use. These payments have nothing to do with the issuance of title insurance and are made by title insurers merely to inflate their revenues and steer business their way.

43. The manner in which the title insurance industry operates has fueled Defendants' conspiracy. Title insurance is issued primarily through title agents, many of whom, in addition to their contractual appointment as agents of their title insurer principals, are owned or otherwise controlled by the Defendant title insurers.

44. The most effective way for a particular title insurer to obtain business is to encourage the real estate middlemen – the brokers, lenders, title agents and others – to steer business to that insurer. The best way to so motivate these third party representatives is not

through lower prices (that they are not even paying). Rather, it is through kickbacks in the form of finder's fees, gifts, and other financial enticements. Therefore, it is higher collusive pricing (which allows for this third-party consideration), not lower pricing, which provides the best way for title insurers to increase their business.

45. NJLTIRB files the title insurance rates for its members in New Jersey. These rates are tied to the value of the property being insured. This is so despite the fact that the costs associated with title insurance are unrelated to the value of the property. Indeed, these costs, which include agency kickbacks and enticements, have little to do with producing a particular title policy and provide no value – proportional to property value or otherwise – to the consumer.

46. In *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992), the Supreme Court held that, in order to be immune from liability for price-fixing, title insurance rate-setting bureaus have to be actively supervised by state agencies. Following the Supreme Court's instruction in *Ticor*, the Third Circuit, on remand in *Ticor Title Ins. Co. v. FTC*, 998 F.2d 1129 (3d Cir. 1992), upheld the FTC's finding that the collective rate-setting of certain state rating bureaus was improper because it was not actively supervised by the state. According to the Circuit court, "[t]he Supreme Court plainly instructed us that a state's rubber stamp is not enough. Active supervision requires the state regulatory authorities' independent review and approval." *Id.* at 1139.

47. Through NJLTIRB, Defendants have set up a rate-setting scheme to evade the rigors of state oversight required by *Ticor*. Services performed by title agents in connection with the issuance of title insurance and property settlements, including charges for title search, title examination, closing, or escrow services, are not included in the rates set by NJLTIRB for title insurance. Instead, title agents impose collectively set separate charges for each of these services

performed. Despite the separate provision of fees for services performed, the bulk of the premiums agreed upon and submitted to the Department of Insurance by NJLTIRB consist of costs unrelated to the issuance of title insurance, including hidden kickbacks and other financial inducements title insurers provide to title agents and indirectly (through title agents) to brokers, lenders and others. These payments have nothing to do with the issuance of title insurance or the business of insurance and are made by title insurers merely to inflate their revenues and as an inducement to steer business their way.

48. Defendants' design in all of this has been to effectively "hide" the cost basis for their artificially high and collectively fixed title insurance premiums from the regulatory scrutiny that *Ticor* demands.

49. In a report dated April 13, 2007, *Title Insurance: Actions needed to Improve Oversight of the Title Industry and Better Protect Consumers*, GAO-07-401, the U.S. Government Accountability Office ("GAO") stated that the title insurance industry is in need of greater state regulation. The GAO studied the industry conditions of several states, and concluded that "state regulators have not collected the type of data, *primarily on title agents' costs and operations*, needed to analyze premium prices and underlying costs." (Emphasis added.)

50. Throughout the Class Period and at times prior, the Department of Insurance has not actively supervised the Defendants' collective rate setting scheme.

51. Throughout the Class Period and at times prior, the Department of Insurance has obtained neither the type of data needed to analyze premium prices and underlying costs nor the reasonableness of the collectively set fees for services. As such the Department of Insurance has not subjected the Defendants to any analysis designed to determine whether NJLTIRB and

Defendants' filed rates for title insurance and attendant services conformed to the statutory requirements that they be reasonable, not excessive, and non-discriminatory.

52. On information and belief and based upon an investigation of Plaintiffs' counsel, throughout the Class Period and at times prior, the Department of Insurance did not conduct a meaningful regulatory review. The effect of this under-regulation has been to permit the Defendants to file – and obtain approval for – rates for insurance and attendant services at supra-competitive levels.

53. Unchecked by regulatory review and insulated from competition, Defendants have thus been able to collectively fix rates for title insurance and attendant services at supra-competitive levels and earn profits that vastly exceed those contemplated by the New Jersey Legislature or that would have resulted from a free and open competitive market.

COUNT I.

VIOLATIONS OF THE SHERMAN ACT

54. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

55. Beginning at least as early as March 19, 2004, and continuing thereafter to the present, the exact dates being unknown to plaintiffs, Defendants and their co-conspirators engaged in a contract, combination or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.

56. The aforesaid contract, combination or conspiracy have consisted of a continuing agreement, understanding and concert of action among the Defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance and attendant services throughout the State of New Jersey; and,

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance and attendant services in the State of New Jersey.

57. Those Defendants who are New Jersey licensed title insurance companies are competitors in the sale of title insurance to consumers in New Jersey. Through NJLTIRB, Defendants and their co-conspirators have agreed upon and engaged in concerted efforts to (i) collectively set and charge uniform and supra-competitive rates for title insurance and attendant services in New Jersey, (ii) embed within these title insurance rates payoffs, kickbacks, and other charges that are unrelated to the issuance of title insurance or the business or insurance, and (iii) hide these supposed "costs" from regulatory scrutiny by funneling them to and through title agents.

58. In the absence of proper regulatory authority and oversight, Defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and attendant services in New Jersey and is a *per se* violation of Section 1 of the Sherman Act.

59. Defendants' price-fixing activity has been continuous throughout the relevant damages period and has been renewed and reinforced through NJLTIRB's submissions to the Department of Insurance of supposed cost and revenue information and its periodic submissions of rate changes.

60. Through their collective price-fixing and manipulation of the regulatory process, Defendants have harmed competition by charging consumers supra-competitive prices for title insurance and attendant services in New Jersey.

COUNT II.

VIOLATIONS OF THE NEW JERSEY ANTITRUST ACT

61. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully set forth herein.

62. By and through the conduct complained of herein, Defendants and their co-conspirators engaged in a contract, combination or conspiracy in an unlawful restraint of trade or commerce in the State of New Jersey in violation of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 *et seq.*

63. The aforesaid contract, combination or conspiracy have consisted of a continuing agreement, understanding and concert of action among the Defendants and their co-conspirators, the substantial terms of which have been:

(a) to fix, raise, maintain and stabilize the price of title insurance and attendant services throughout the State of New Jersey; and,

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of title insurance and attendant services in the State of New Jersey.

64. Those Defendants who are New Jersey licensed title insurance companies are competitors in the sale of title insurance to consumers in New Jersey. Through NJLTIRB, Defendants and their co-conspirators have agreed upon and engaged in concerted efforts to (i) collectively set and charge uniform and supra-competitive rates for title insurance and attendant services in New Jersey, (ii) embed within these title insurance rates payoffs, kickbacks, and other charges that are unrelated to the issuance of title insurance or the business or insurance, and (iii) hide these supposed "costs" from regulatory scrutiny by funneling them to and through title agents.

65. In the absence of proper regulatory authority and oversight, Defendants' conduct constitutes a horizontal agreement to fix the form, structure, and prices of title insurance and attendant services in New Jersey and is a *per se* violation of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 *et seq.*

66. Defendants' price-fixing activity has been continuous throughout the relevant damages period and has been renewed and reinforced through NJLTIRB's submissions to the Department of Insurance of supposed cost and revenue information and its periodic submissions of rate changes.

67. Through their collective price-fixing and manipulation of the regulatory process, Defendants have harmed competition by charging consumers supra-competitive prices for title insurance and attendant services in New Jersey.

ANTITRUST INJURY

68. The aforesaid contract combination or conspiracy has had the following effects among others:

(a) price competition in the sale of title insurance and attendant services has been suppressed, restrained and eliminated;

(b) prices for title insurance and attendant services have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and,

(c) purchasers of title insurance have been deprived of the benefit of free and open competition.

DAMAGES

69. During the period of the antitrust violations by Defendants and their co-conspirators, plaintiffs and each member of the Class they represent, have purchased title insurance and attendant services and, by reason of the antitrust violations herein alleged, paid more for such than would have been paid in the absence of said antitrust violations. As a result, plaintiffs and each member of the Class they represent have been injured and damaged in an amount presently undetermined.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, plaintiffs demand a jury trial as to all issues triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand:

(a) That the alleged contract, combination or conspiracy among the Defendants and their co-conspirators be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

(b) That the alleged contract, combination or conspiracy among the Defendants and their co-conspirators be adjudged and decreed to be an unlawful restraint of trade or commerce in the State of New Jersey in violation of the New Jersey Antitrust Act;

(c) That judgment be entered against Defendants, jointly and severally, and in favor of plaintiffs, and each member of the Class they represent, for threefold the damages determined to have been sustained by plaintiffs, and each member of the Class they represent, together with the cost of suit, including a reasonable attorneys' fee;

(d) That each of the Defendants, successors, assignees, subsidiaries and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, adopting or following any practice, plan, program, or design having a similar purpose or effect in restraining competition; and,

(e) Such other and further relief as may be necessary and appropriate.

Dated: October 10, 2008 **LITE DEPALMA GREENBERG & RIVAS, LLC**

By: /s/ Joseph J. DePalma

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Plaintiffs, by their attorneys, hereby certify that to the best of their knowledge, the matter in controversy is related to In re New Jersey Title Insurance Litigation, bearing Civil Action No. 08-cv-1425 (PGS). Plaintiffs are not currently aware of any other party who should be joined in this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 10, 2008

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